



State of Wisconsin \ Department of Commerce

RULES in FINAL DRAFT FORM

Rule No.: Chs. Comm 2, Comm 20 and 21, Comm 60 and 61

Relating to: Erosion Control, Sediment Control and Storm Water
Management for the Construction of Buildings

Clearinghouse Rule No.: 05-113

RULE REPORT

Department of Commerce

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Rule No.: Chapters Comm 2, Comm 20 and 21, Comm 60 and 61

Relating to: Erosion Control, Sediment Control and Storm Water Management for the Construction of Buildings

Contact person for substantive questions:

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Title Program Manager

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1. Basis and purpose of the proposed rule.

Pursuant to ss. 101.1205 and 101.653, Stats., the proposed rules are intended to protect the waters of the state by lessening the amounts of soil, sediment and pollutants that may be conveyed into the waters by storm water runoff during the construction of public buildings, places of employment and one- and two- family dwellings.

2. How the proposed rule advances relevant statutory goals or purposes.

The proposed rules establish statewide specification and performance standards for erosion and sediment control when land disturbing construction activity occurs for building public buildings, places of employment and one- and two- family dwellings. The rules also establish post construction storm water management standards for those sites where one or more acres of disturbance occur.

3. Changes to the rule analysis or fiscal estimate that was prepared for public hearing.

The rule analysis has been revised to describe the factual data and analytical methodologies used in the development of the rules. The rule analysis relating to the effect on small business has been modified to describe the type of businesses impacted by the rules. The modification also describes how the Department intends to lessen the impact for businesses in complying with certain aspects of the rules.

FINAL REGULATORY FLEXIBILITY ANALYSIS

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Final regulatory flexibility analysis not required. (Statement of determination required.)

1. Reason for including or failing to include the following methods for reducing impact of the rule on small businesses: Less stringent compliance or reporting requirements; less stringent schedules or deadlines for compliance or reporting requirements; simplification of compliance or reporting requirements; establishment of performance standards to replace design or operational standards; exemption from any or all requirements.

Pursuant to statutory mandates under sections 101.1205 and 101.653, Stats., the rules establish statewide standards for erosion and sediment control for the construction of public buildings, places of employment and one- and two- family dwellings in order to protect the waters of the state. For construction sites where one or more acres of land-disturbing activity occurs the rules and compliance with the rules reflect the standards of the U.S Environmental Protection and the Wisconsin Department of Natural Resources. In order to achieve the statutory goal of protecting the waters of the state compliance is not differentiated based upon the size of a business. The proposed rules establish different standards for the potential risk posed by the amount of the land disturbing construction activity, in this case, one or more acres and less than one acre.

The proposed rules were revised eliminating the requirement for the collection of certain precipitation data at construction sites because the earlier proposal was not consistent with standards of EPA and DNR.

2. Issues raised by small businesses during hearings, changes in proposed rules as a result of comments by small businesses and reasons for rejecting any alternatives suggested by small businesses.

The Wisconsin Builders Association, which includes many small businesses in its membership, made several comments including:

- A concern that the rules exceeded federal and state laws, specifically in regards to sites where less than one acre of land disturbing construction activity occur.
- The rules will be impractical to implement particularly for small construction sites.

The Department believes that the rules fulfill statutory mandates under ss. 101.1205 and 101.653, Stats. The proposed rules for one- and two- family dwelling sites where less than one acre of disturbance occurs do not differ substantially than the current rules and reflect current practices. Compliance solutions for small sites are to be available from the Department via publications and the internet.

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3. Nature and estimated cost of preparation of any reports by small businesses.

The proposed rules do not result in the preparation of any new reports; presently at construction sites where one or more acres of land disturbing activities occur, Notices of Intent, NOI's, must be filed with the Department. The filing of an NOI will be accomplished via the Department's web site utilizing interactive analytical software. A log must be maintained for these type of construction sites. The logs are to describe the inspection and maintenance of erosion and sediment control practices during the course of the construction.

4. Nature and estimated cost of other measures and investments required of small businesses.

The proposed rules do not require specific new investments for small businesses. The rules provide flexibility in complying with the technical standards regarding erosion and sediment control and storm water management.

5. Additional cost to agency of administering or enforcing a rule which includes any of the methods in 1. for reducing impact on small businesses.

In general the few revisions reducing the impact on small businesses will not make a difference in how the Department will administer and enforce the rules.

6. Impact on public health, safety and welfare caused by including any of the methods in 1. for reducing impact on small businesses.

Not applicable.

RESPONSE TO LEGISLATIVE COUNCIL CLEARINGHOUSE REPORT

Department of Commerce

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Name: Lynita Docken

Title: Program Manager

Telephone No. 608/785-9349

Legislative Council report recommendations accepted in whole.

☐ Yes

☒ No

1. Review of statutory authority [s. 227.15(2)(a)]

a. ☒ Accepted

b. ☐ Accepted in part

c. ☐ Rejected

d. ☐ Comments attached

2. Review of rules for form, style and placement in administrative code [s. 227.15(2)(c)]

a. ☐ Accepted

b. ☒ Accepted in part

c. ☐ Rejected

d. ☒ Comments attached

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3. Review rules for conflict with or duplication of existing rules [s. 227.15(2)(d)]
- a. ☒ Accepted
 - b. ☐ Accepted in part
 - c. ☐ Rejected
 - d. ☐ Comments attached
4. Review rules for adequate references to related statutes, rules and forms [s. 227.15(2)(e)]
- a. ☒ Accepted
 - b. ☐ Accepted in part
 - c. ☐ Rejected
 - d. ☐ Comments attached
5. Review language of rules for clarity, grammar, punctuation and plainness [s. 227.15(2)(f)]
- a. ☐ Accepted
 - b. ☒ Accepted in part
 - c. ☐ Rejected
 - d. ☒ Comments attached
6. Review rules for potential conflicts with, and comparability to, related federal regulations [s. 227.15(2)(g)]
- a. ☒ Accepted
 - b. ☐ Accepted in part
 - c. ☐ Rejected
 - d. ☐ Comments attached
7. Review rules for permit action deadline [s. 227.15(2)(h)]
- a. ☒ Accepted
 - b. ☐ Accepted in part
 - c. ☐ Rejected
 - d. ☐ Comments attached